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THE KEY IMPLICATION OF SECTION 29A IN CORPORATE INSOLVENCY RESOLUTION PROCESS

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I. ABSTRACT

This research paper tries to explore the current situation of Section 29A of the IBC, and also the CIRP's aftermath. The Insolvency and Bankruptcy Code (IBC) governs insolvency proceedings, with the main objective of presenting a resolution plan to a corporate debtor. Earlier, a resolution applicant may be anyone who submitted a resolution plan to the resolution professional, and a resolution plan could have been any plan suggested by anyone for the corporate debtor's insolvency resolution. Since there were no specific criteria or qualifications, any party, including the corporate debtor's promoters or any connected party, might propose a resolution plan.

The main objective of the paper to evaluate the function of CIRP after the encapsulation of Section 29A into the code. Section 29A of the IBC has become one of the most important statutes in evaluating Resolution Applicants' eligibility throughout the Corporate Insolvency Resolution Process. In its initial it includes safeguards to prevent defaulting promoters from acquiring the corporate debtor also debarred the promoters to regain the control over the company with non-performing asset amount.

II. KEYWORDS:

IBC, Section 29A, CIRP, Ineligible Person, Connected Person.

III. INTRODUCTION

After great thought, the Insolvency and Bankruptcy Code (hereinafter, IBC) came into effect from the year 2016, which specifies the time period to resolve insolvency with the help of an Insolvency Resolution Professional (IRP). The IBC Code is an important piece

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of legislation in India that creates a framework for time-bound resolution of unpaid debts by enabling restructuring, insolvency, and bankruptcy law for corporations. By incorporating the Corporate Insolvency Resolution process, it intended to improve the ease of doing business in the country (CIRP). This resolution process was inclusive in nature at the time of enactment and didn't contain any provision prohibiting the person to initiate the process.

Parliament was genuinely concerned about the wrongdoing contributed to debtor company defaults from taking advantage of such participation which would undermine the Act's beneficial goal and purpose. In the interest of the people and to facilitate effective corporate governance, Parliament amended the Act, and Section 29A was enacted. The Act was amended by Parliament to remove a loophole that allowed former CIRP management to gain backdoor access. Section 29A is being interpreted in a purposive way. Section 29A has been considered as a vital link in ensuring that the IBC's aims are not undermined by allowing "ineligible people," including in management who have direct and control from the bottom - up approach, to resurface in the new picture of resolution applicants.[3]

Significantly, this amended legislation engrafts the ineligibility in both Chapter II and Chapter III of the code dealing with CIRP requirements and liquidation process respectively. The rational overwhelming view of Parliament behind this Bill is to safeguard the corporations from such defaulters, who would have just walked back into these corporations by paying only a fraction of the amounts owed.

But like any other developing law has also faced certain problems with developing law with regard to its implementation. Moreover, there have been immediate steps taken by the Government to ebb out the flaws in this code.

IV. CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP): AN OVERVIEW

[3] ArcelorMittal India Private Limited Vs. Satish Kumar Gupta and Ors, AIR 2018 SC 5646.

The IBC introduced the Corporate Insolvency Resolution Process into the system as a rehabilitative process that begins with a person acquiring a firm's assets in order to prevent the company from going bankrupt. An insolvent corporation would go through a Corporate Insolvency Resolution Process (CIRP), in which possibilities for resuscitation would be examined. The Insolvency and Bankruptcy Code was created to make doing business in the country easier. After the Sick Industrial Companies Act (SICA), Corporate Debt Restructuring (CDR), Joint Lenders' Forum (JLF), Strategic Debt Restructuring (SDR), and the S4A Scheme were all merged into one, the IBC determined that failure to reach a resolution would result in the company's liquidation.[4]

The occurrence of default is the trigger point to commence the CIRP. An applicant can initiate the resolution process when the corporate debtor commits a "default" by failing to pay the whole amount of debt that has become due and payable, or any part or payment thereof.[5] The minimum amount of the default of repayment of debt has to be Rs. 1,00,000. The Central Government also has the power to specify a minimum amount of default higher than this but below a ceiling of one crore rupees[6].

A financial creditor,[7] Operational Creditor,[8] or Corporate Debtor[9] initiates CIRP by filing an application with the National Company Law Tribunal (NCLT). Before addressing the NCLT, operational creditors must send a 10-day demand notice to the corporate debtor[10].

Once the application is admitted, the NCLT would issue an IRP within 14 days who would conduct the CIRP, this IRP can be recommended by either of the parties. The IRP would then take care of debtors functioning. After which, a public announcement of initiation of CIRP would be made which would result into the forming of a Committee

[4] National Law School of India Review Vol. 30, No. 2 (2018), pp. 136-172 (37 pages), Published By: Student Advocate Committee, available at https://www.jstor.org/stable/26743941b (Last accessed 15 June. 2023).
[5] Insolvency and Bankruptcy Code,2016, § 3(12), No. 31, Act of Parliament, 2016 (India).
[6] Insolvency and Bankruptcy Code,2016, § 4, No. 31, Act of Parliament, 2016 (India).
[7] Insolvency and Bankruptcy Code,2016, § 7, No. 31, Act of Parliament, 2016 (India).
[8] Insolvency and Bankruptcy Code,2016, § 9, No. 31, Act of Parliament, 2016 (India).
[9] Insolvency and Bankruptcy Code,2016, § 10, No. 31, Act of Parliament, 2016 (India).
[10] Insolvency and Bankruptcy Code,2016, § 8(2), No. 31, Act of Parliament, 2016 (India).

of Creditors[11] (CoC). Certain restrictions and conditions have also been stated in the code with regards to appointment of IRP and how he can be removed. According to me, the CoC holds a lot of power in the insolvency proceedings. It can also remove the Insolvency Professional anytime it wants, with 75% of votes. The basic aim while involving CIRP by the Government was to decrease the average time taken for insolvency proceedings and also reduce the litigation expenses of the Company. The code stipulates a 180-day deadline, which can be extended by another 90 days, giving companies a total of 270 days to finish the transaction or face liquidation.

In addition, the code provides for a moratorium under S.14 of the Statute. It is one of the legislation's most notable features, as it expressly prevents the filing of proceedings or the continuing of present procedures against the corporate debtor in any court, tribunal, arbitration panel, or other entity. Furthermore, after the application is approved and a moratorium is proclaimed, the moratorium's goal is to prevent the Corporate Debtor's assets from being encumbered, liquidated, or alienated. As a result, once the application is approved and a moratorium is imposed, the Corporate Debtor's financial status must be transparent and crystalline, and NCLT proceedings against the Corporate Debtor must be postponed.[12] Also, the moratorium would not apply to property that was not owned by the Corporate Debtor.[13] Moratorium is unique in that it is not automatically imposed; instead, it must be enforced by a tribunal or a court. The 'Resolution Professional' will manage the firm and ensure that it remains a going concern while protecting its assets until the 'terms and conditions' under Section 12A are accomplished.[14]

The foundation of CIRP has been laid upon Transparency, Resolution & Accountability. The role of Indian Judiciary has also proved to be important in the development of CIRP as it has brought various important points into the notice of the government. It is a step

[11] Insolvency and Bankruptcy Code,2016, § 21, No. 31, Act of Parliament, 2016 (India).
[12] Sanjeev Shriya v. State Bank of India and Ors., Civil Writ Petition No. 30285 of 2017.
[13] Schweitzer Systemtek India Pvt. Ltd. v. Pheonix ARC Pvt. Ltd. & Ors., Company Appeal (AT) (Insolvency) No. 129 of 2017.
[14] Andhra Bank and Ors. vs. Sterling Biotech Ltd. and Ors. [2019]152 CLA 261.

in the right direction, but it is not something to dwell upon. Each of the schemes which were consolidated under IBC were a step in the right direction but had to be closed down eventually.

CIRP has undoubtedly revolutionized how insolvency proceedings in India take place but there is still a long way to go. Proper implementation and it is a bud sure to blossom into a flower.

V. RELATION BETWEEN SECTION 29A AND CIRP

The originally enacted IBC didn't contain any provision regarding the ineligibility of person to initiate a resolution process. In its initial form, the Code for corporate insolvency resolution and liquidation did not restrict anybody from presenting a resolution process or retaining any company's assets throughout the liquidation process. Furthermore, concerns have been made that individual who contributed to corporate bankruptcy through misconduct or who are otherwise undesirable could take advantage of the lack of prohibitions in the settlement or liquidation process to reclaim control of the corporate debtor. It could jeopardize the Code's procedures because it looks that the dishonest person gets rewarded at the expense of creditors. Moreover, the CoC has been tasked with the responsibility of returning unpaid funds within a fair time frame in order to check the eligibility of an unwanted individual.to present a resolution process.

In a dissolution or resolution, each creditor receives his or her share, and the person who caused the insolvency pays a percentage of the money and returns it to management. In order to put an end to this, parliament inserted Section 29A[15] into IBC with an aim to prevent person who is responsible for the corporate debtor's insolvency from taking participation in the resolution process. It provides a list of persons who are ineligible to be resolution applicants.[16] Significantly, this amended legislation engrafts the ineligibility in both Chapter II and Chapter III of the code dealing with CIRP requirements and

[15] TK Viswanathan et al., The Report of the Bankruptcy Law Reforms Committee— Volume I: Rationale and Design (2015) [hereinafter BLRC Report], https://ibbi.gov.in/BLRCReportVol1_0411 2015.pdf. [hereinafter BLRC Report] (Last accessed 22 June. 2023).
[16] Arun Kumar Jagatramka vs. Jindal Steel and Power Ltd. and Ors, AIR 2021 SC 1563.

liquidation process respectively. The rational overwhelming view of Parliament behind this Bill is to safeguard the corporations from such defaulters, who would have returned into these corporations if they would have only cleared a fraction of the debt.

The unresolved dispute between the parties after the IBC was implemented gives rise to Section 29A IBC, 2016. After the case of ***Edelweiss Asset Reconstruction Company Ltd v. Synergies Dooray Automotive Ltd. & Ors***[17] the need to reform the IBC became apparent. In this case, the main issue in *Synergies Dooray* was that related parties must be excluded from the members of the CoC to prevent promoters from reclaiming control of the company and the NCLAT approved Synergies Castings' resolution plan. In ***Phoenix Arc Private Ltd. v. Spade Financial Services Ltd***[18], the Hon'ble Supreme Court held that in order to participate in the CoC, connected parties may be required to divest any shares they own as a corporate debtor, and these creditors should be excluded from the CoC in such circumstances.

Under Section 29A there are several conditions upon which a person is ineligible to file a resolution plan before the NCLT. This condition will be "a person is an undischarged insolvent[19], a wilful defaulter[20], the promoter has control over the account of the company that has been declared NPA for over a year, insolvency proceeding was initiated against such person[21], a person who is convicted for punishable offence of 2 years or Seven year or more[22], a person disqualifies to act as a director[23], a person who prohibited by the SEBI[24]. Apart from the above conditions, connected parties are also debarred to propose a resolution plan under section 29A of the IBC[25]. After the amendment the liquidator is

[17] Edelweiss Asset Reconstruction Company Ltd v. Synergies Dooray Automotive Ltd. & Ors 2018 SCC Online NCLAT 845.
[18] Phoenix Arc Private Ltd. v. Spade Financial Services Ltd Civil Appeal No. 2842 of 2020.
[19] Insolvency and Bankruptcy Code,2016, § 29A(a), No. 31, Act of Parliament, 2016 (India).
[20] Insolvency and Bankruptcy Code,2016, § 29A(b), No. 31, Act of Parliament, 2016 (India).
[21] Insolvency and Bankruptcy Code,2016, § 29A(h), No. 31, Act of Parliament, 2016 (India).
[22] Insolvency and Bankruptcy Code,2016, § 29A(d), No. 31, Act of Parliament, 2016 (India).
[23] Insolvency and Bankruptcy Code,2016, § 29A(e), No. 31, Act of Parliament, 2016 (India).
[24] Insolvency and Bankruptcy Code,2016, § 29A(f), No. 31, Act of Parliament, 2016 (India).
[25] M.P. Ram Mohan, Vishakha Raj, Section 29A of India's Insolvency and Bankruptcy Code: An Instance of Hard Cases Making Bad Law, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3886464 (Last visited 22nd June. 2022).

no longer allowed to sell the company's movable and immovable property to anyone who is disqualified under Section 29A of the IBC.[26].

Many developments have been emerged by the Judicial Interpretation after the amendment in the IBC. In the case of ***Swiss Ribbons Pvt. Ltd. and Ors. Vs. Union of India***[27] the validity of section 29(c) of the IBC was challenged, the Supreme Court held that '*a one-year gap, in addition to the 90-day period that must occur after a default before an asset is categorized as an NPA, allows any resolution applicant enough time to pay off their debts before proposing a resolution plan'*.

In the case of ***Arcellormittal Ltd. v. Satish Kumar Gupta***[28],the Hon'ble Court rejected Arcellormittal Ltd.'s resolution plan because it was ineligible under section 29A of the IBC. In the case ***Chitra Sharma v. Union of India***[29], the Court ruled that invalidate the resolution plan on the ground of ineligibility.

The Hon'ble Courts use the Purposive interpretation to the underlying premise that the current management and promoters of a corporate debtor should not be permitted to reclaim control of their company is a common theme in all NCLAT and Supreme Court judgements. This idea is predicated on the idea that those who contributed to the corporate debtor's downfall should not be permitted to continue to have a part in its future.

VI. CONCLUSION & SUGGESTION

While India now has a strong bankruptcy and insolvency framework by international standards, how it is applied will be the litmus test for its accomplishment in terms of delivering certainty and predictability to commercial transactions and facilitating the ease of doing business in the country. Various practical, logistical, and legal obstacles must be addressed, and the coming days will be vital, with much riding on the technical

[26] Ibid
[27] Swiss Ribbons Pvt. Ltd. and Ors. Vs. Union of India MANU/SC/0079/2019.
[28] Arcellormittal (India) Ltd. v. Satish Kumar Gupta 2019 (2) SCC 1.
[29] Chitra Sharma v. Union of India (2018) 18 SCC 575.

details of the provisions that are now expected to be promulgated under the Code. The CIRP like any other developing law has also faced certain problems with developing law with regard to its implementation. The Government as well as the Insolvency Board has constantly aimed at flushing out these flaws in the code. The Ground realities are realities are much different than the expectations which were laid.

Moreover, there have been immediate steps taken by the Government to ebb out the flaws in this code. Project Sashakta[30] is on the radar and has aimed at sketching the resolution of bad loans and also strengthening credit capacity of Public Sector banks. Another important thing this code has done is bring a certain sense of urgency amongst the companies and the stakeholders, there is a fear of losing their companies as well. In my opinion, the major role in this process is taken by the Resolution Professional and their functioning is a decisive factor in CIRP. What makes the IBC more challenging is the constantly changing society and emergent of new loop holes, but it will do better to make CIRP a success in the long term future.

The IBC over the course of its existence has had quite a significant impact at the Indian corporate insolvency field and has appeared to suit India's modern needs better than any previous insolvency legislative instrument. A large portion of the roads remains yet to be traversed and that time may tell what the destiny of IBC holds.

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[30] Proposed to consolidate the stressed assets of a corporate entity by PNB chairman "Sunil Mehta"

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